

BILL ANALYSIS

Senate Research Center

S.B. 7
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Criminal Justice
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Enrolled

DIGEST AND PURPOSE

Throughout the many criminal courts of Texas' 254 counties the variety of indigent defense systems result in a lack of uniformity in standards and quality of representation among those many indigent defense systems. S.B. 7 provides for added order, accountability, and quality control of the state's provisions relating to indigent defense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Task Force on Indigent Defense in SECTION 14 (Section 71.055, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be known as the Texas Fair Defense Act.

SECTION 2. Amends Article 1.051, Code of Criminal Procedure, by amending Subsection (c) and adding Subsections (i), (j), and (k), as follows:

(c) Requires a court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county, except as otherwise provided by this subsection, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, to appoint counsel as soon as possible, but not later than the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. Requires the court or the courts' designee, in a county with a population of 250,000 or more, to appoint counsel as required by this subsection as soon as possible, but not later than the end of the first working day after the date on which the court or court's designee receives the defendant's request for appointment of counsel.

(i) Requires a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county, except as otherwise provided by this subsection, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have not been initiated against the defendant, to appoint counsel immediately following the expiration of three working days after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. Requires the court or the courts' designee, if adversarial judicial proceedings are initiated against the defendant before the expiration of the three working days, to appoint counsel as provided by Subsection (c). Requires the court or the courts' designee, in a county with a population of 250,000 or more, to appoint counsel as required by this subsection immediately following the expiration of one working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. Requires the court or the courts' designee, if adversarial judicial proceedings are initiated against the defendant before the expiration of the one working day, to appoint counsel as provided by Subsection (c).

(j) Provides that notwithstanding any other provisions of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

- (k) Authorizes a court or the courts' designee to without unnecessary delay appoint new counsel to represent an indigent defendant for whom counsel is appointed under Subsection (c) or (i) if certain conditions exist.

SECTION 3. Amends Article 14.06(a), Code of Criminal Procedure, to require the person making the arrest or the person having custody of the person arrested, except as provided by Subsection (b), in each case enumerated in this Code, to take the person arrested or have the person taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, if necessary to provide more expeditiously to the person arrested the warnings described by Article 15.17, before a magistrate in a county bordering the county in which the arrest was made.

SECTION 4. Amends Article 15.17, Code of Criminal Procedure, by amending Subsection (a) and adding Subsections (e) and (f), as follows:

(a) Requires the person making the arrest or the person having custody of the person arrested, in each case enumerated in this Code, to take, without unnecessary delay, but not later than 48 hours after the person is arrested, the person arrested or have the person taken before some magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in a county bordering the county in which the arrest was made. Deletes existing text regarding the right to request counsel under certain conditions. Requires the magistrate to also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. Requires the magistrate to inform the person arrested of the procedures for requesting appointment of counsel. Requires the magistrate, under certain conditions, to inform the person in a certain manner. Requires the magistrate to ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. Requires the magistrate, if the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, to appoint counsel in accordance with Article 1.051. Requires the magistrate, if the magistrate is not authorized to appoint counsel, to without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. Makes nonsubstantive changes.

(e) Requires a record, in each case in which a person arrested is taken before a magistrate as required by Subsection (a), to be made of certain items.

(f) Authorizes a record required under Subsection (e) to consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

SECTION 5. (a) Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.033, as follows:

Sec. 17.033. RELEASE ON BOND OF CERTAIN PERSONS ARRESTED WITHOUT A WARRANT. (a) Requires a person, except as provided by Subsection (c), who is arrested without a warrant and who is detained in jail to be released on bond, in an amount not to exceed \$5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. Requires the person, if the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, to be released on personal bond.

(b) Requires a person who is arrested without a warrant and who is detained in jail, except as provided by Subsection (c), to be released on bond, in an amount not to exceed \$10,000, not later than the 48th hour after the person's

arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. Requires the person, if the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, to be released on personal bond.

(c) Authorizes a magistrate, on the filing of an application by the attorney representing the state, to postpone the release of a person under Subsection (a) or (b) for not more than 72 hours after the person's arrest. Requires an application filed under this subsection to state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

(b) Makes application of Article 17.033, Code of Criminal Procedure, as added by this Act, prospective.

SECTION 6. Amends Article 26.04, Code of Criminal Procedure, as follows:

Art. 26.04. New heading: PROCEDURES FOR APPOINTING COUNSEL. (a) Requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, to adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. Requires the procedures to be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. Requires a court to appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsections (f), (h), or (i). Requires the court to appoint attorneys from among the next five names of the appointment list in the order in which the attorney's names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Requires an attorney who is not appointed in the order in which the attorney's name appears on the list to remain next in order on the list.

(b) Sets forth conditions for the procedures adopted under Subsection (a).

(c) Requires a court or the courts' designee, whenever the court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines that a defendant charged with a felony or a misdemeanor punishable by confinement, rather than imprisonment, is indigent or that the interests of justice require representation of a defendant in a criminal proceeding, to appoint one or more practicing attorneys to defend the defendant in accordance with this subsection and the procedures adopted under Subsection (a). Requires the court or the courts' designee, under certain conditions, to make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

(d) Requires a public appointment list from which an attorney is appointed as required by Subsection (a) to contain the names of qualified attorneys, who meet certain specific criteria.

(e) Requires certain judges in certain counties, by formal action, to establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement and to specify the objective qualifications necessary for an attorney to be included on the list. Authorizes certain judges in certain counties, by formal action, to establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorney's qualifications.

Requires certain judges in certain counties, by formal action, to establish a public appointment list of attorneys qualified to provide representation in felony cases in the county and to specify the objective qualifications necessary for an attorney to be included on the list. Authorizes certain judges in certain counties, by formal action,

to establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorney's qualifications.

(f) Authorizes the court or the courts' designee, in a county in which a public defender is appointed under Article 26.044, to appoint the public defender to represent the defendant in accordance with guidelines established for the public defender.

(g) Provides that in a countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this section vote to establish the alternative program. Authorizes an alternative program for appointing counsel in misdemeanor and felony cases to be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. Authorizes an alternative program for appointing counsel in misdemeanor cases to be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. Authorizes an alternative program for appointing counsel in felony cases to be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. Sets forth conditions for the establishment and administration of an alternative program in a county.

(h) Authorizes a court or the courts' designee, in a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, to appoint an attorney to represent an indigent defendant by using the alternative program. Prohibits the judges of the courts establishing an alternative program under Subsection (g) from obligating the county by contract or by the creation of new positions or the creation or adoption of new programs that cause an increase in expenditure of county funds, without the approval of the commissioners court.

(i) Authorizes a court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused of a felony to appoint an attorney from any county located in the court's administrative judicial region.

(j) Reletters existing text of Subsection (a) as Subsection (j), as follows. Requires an attorney appointed under this article, rather than subsection, to make every reasonable effort to contact the defendant not later than 24 hours after the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed and represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of the attorney's duties by the court or replaced by other counsel for legal cause stated on the record.

(k) Authorizes a court to replace an attorney who violates Subsection (j)(1) with other counsel. Authorizes a majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county to remove from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

(l) Requires procedures adopted under Subsection (a) to include procedures and financial standards for determining whether a defendant is indigent. Requires the procedures and standards to apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.

(m) Reletters existing text of Subsection (b) as Subsection (m) as follows. Authorizes, rather than requires, the court or the courts' designee, in determining whether a defendant is indigent, to consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the

defendant. Deletes existing text regarding the defendant's posting of bail. Prohibits the court or the courts' designee from considering whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection. Deletes existing text regarding the denial of appointed counsel.

Reletters existing text of Subsections (c) and (d) as Subsections (n) and (o) making nonsubstantive changes.

(p) Reletters existing text of Subsection (e) as Subsection (p) as follows. Provides that a defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. Authorizes the defendant, the defendant's counsel, or the attorney representing the state, if there is a material change in financial circumstances after a determination of indigency or nonindigency is made, to move for reconsideration of the determination.

Reletters existing text of Subsection (f) as Subsection (q).

(r) Prohibits a court from threatening to arrest or incarcerate a person solely because the person requests the assistance of counsel.

SECTION 7. Amends Article 26.044, Code of Criminal Procedure, as follows:

Art. 26.044. New heading: PUBLIC DEFENDER. (a) Defines "public defender."

(b) Reletters existing text of Subsection (a) as Subsection (b), and amends as follows. Authorizes the commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases in the county, to appoint a governmental entity or nonprofit corporation, rather than one or more attorneys, to serve as a public defender. Deletes existing text regarding the number of county and district courts. Authorizes the commissioners courts of two or more counties to enter into written agreement to jointly appoint and fund a regional public defender. Deletes existing text regarding the public defender serving at the pleasure of the commissioners court. Requires the commissioners court or the commissioners courts, in appointing a public defender under this subsection, to specify or to jointly specify, if appointing a regional public defender certain information.

(c) Requires the commissioners court or commissioners courts, before appointing a public defender under Subsection (b), to solicit proposals for the public defender. Sets forth information the proposal must include.

(d) Requires the commissioners court or commissioners courts, after considering each proposal for the public defender submitted by a governmental entity or nonprofit corporation, to select a proposal that reasonably demonstrates that the proponent will provide adequate quality representation for indigent defendants in the county or counties.

(e) Prohibits the total cost of the proposal from being the sole consideration in selecting a proposal.

(f) Reletters existing text of Subsection (b) as Subsection (f), and amends as follows. Requires the governmental entity or nonprofit corporation, to be eligible for appointment as a public defender, to be directed by a chief public defender who meets certain criteria.

(g) Reletters existing text of Subsection (c) as Subsection (g), and amends as follows. Provides that a public defender is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by

the commissioners courts and proportionately paid out of each appropriate county fund if the public defender serves more than one county. Deletes existing text regarding an annual salary.

(h) Authorizes a public defender to employ attorneys, licensed investigators, and other personnel necessary to perform the duties of public defender as specified by the commissioners court or commissioners courts under Subsection (b)(1).

(i) Reletters existing text of Subsection (d) as Subsection (i), and amends as follows. Prohibits the chief public defender or an attorney employed by a public defender from engaging in the private practice of criminal law, or accepting anything of value not authorized by this article for services rendered under this article.

(j) Authorizes a public defender to refuse an appointment under Article 26.04(f) if certain conditions exist.

(k) Reletters existing text of Subsection (e) as Subsection (k), and amends as follows. Authorizes the judge to remove a public defender who violates a provision of Subsection (i), rather than Subsection (d) of this article.

(l) Deletes existing text of Subsections (f). Reletters existing text of Subsection (g) as Subsection (l).

(m) Reletters existing text of Subsection (h) as Subsection (m), and amends as follows. Provides that if it is necessary that an attorney other than a public defender be, rather than is appointed, the attorney is entitled to the compensation provided by Article 26.05. Deletes existing text of Subsections (i) - (j).

SECTION 8. Amends Article 26.05, Code of Criminal Procedure, as follows:

(a) Requires a counsel, other than an attorney with a public defender, rather than public defender's office, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, to be paid a reasonable attorney's fee for performing certain services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel.

(b) Requires all payments made under this article to be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. Requires a copy of the schedule, on adoption of a schedule of fees as provided by this subsection, to be sent to the commissioners court of the count. Deletes existing text regarding certain counties adoption of a schedule.

(c) Requires each fee schedule adopted to state, rather than to include, reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and to provide a form for the appointed counsel to itemize, rather than to report, the types of services performed. Prohibits payment from being made under this article, rather than section, until the form for itemizing, rather than reporting, the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment. Requires the judge, if the judge disapproves the requested amount of payment, to make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. Authorizes an attorney whose request for payment is disapproved to appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region. Requires the presiding judge of the administrative judicial region, on the filing of a motion, to review the disapproval of payment and determine the appropriate amount of payment. Authorizes the presiding judge to conduct a hearing in reviewing the disapproval. Requires the commissioners court, not later than the 45th day after the date the application for payment of a fee is submitted under this article, to pay to the appointed counsel the amount approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county. Deletes existing text regarding approval by the court.

(d) Requires a counsel in a noncapital case, other than an attorney with a public defender, appointed to represent a defendant under this code to be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Requires expenses incurred with prior court approval to be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g). Requires expenses incurred without prior court approval to be reimbursed in the manner provided for capital cases by Article 26.052(h).

(e) Authorizes a majority of the judges of the county courts and statutory county courts of the district courts, as appropriate, trying criminal cases in the county to remove an attorney from consideration for appointment if, after a hearing it is shown that the attorney submitted a claim for legal services not performed by the attorney

(f) Reletters existing text of Subsection (d) as Subsection (f).

(g) Reletters existing text of Subsection (e) as Subsection (g). Requires the court to order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay if the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs.

(h) Reletters existing text of Subsection (f) as Subsection (h). Makes a nonsubstantive citation change.

SECTION 9. Amends Article 26.052, Code of Criminal Procedure, by amending Subsections (d) and (e) and adding Subsection (m), as follows:

(d) Requires the local selection committee (committee) to adopt standards for the qualifications of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought. Deletes existing text regarding appointment to death penalty cases. Sets forth requirements of an attorney appointed to a death penalty case the standards must include. Requires the committee to prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment. Requires an attorney, not later than the second anniversary of the date the attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, to present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to the defense of death penalty cases. Requires the committee to remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the course or other training.

(e) Requires the presiding judge of the district court in which a capital felony case is filed to appoint two attorneys, at least one of whom must be qualified under this chapter, rather than counsel, to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty. Deletes existing text regarding appointment for death penalty cases.

(m) Requires the committee to annually review the list of attorneys posted under Subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.

SECTION 10. Amends Article 102.075(h), Code of Criminal Procedure, to require the comptroller to deposit money received under this article to the credit of certain specific accounts in the general revenue fund according to certain specified percentages, including to the fair defense account at 13.98 percent.

SECTION 11. Amends Chapter 51, Family Code, by adding Section 51.101, as follows:

Sec. 51.101. APPOINTMENT OF COUNSEL PLAN. (a) Requires the juvenile board of each county to adopt a plan containing certain information and with certain functions.

(b) Sets forth criteria for a plan adopted under Subsection (a).

SECTION 12. Amends Section 71.001, Government code, to define “ad hoc assigned counsel program,” “contract defender program,” “crime,” “defendant,” “indigent defense support services,” “juvenile offense,” and “public defender.”

SECTION 13. Amends Chapter 71C, Government Code, by adding Section 71.0351, as follows:

Sec. 71.0351. INDIGENT DEFENSE INFORMATION. (a) Requires a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees, not later than January 1 of each year, in each county, to be prepared and sent to the Office of Court Administration (OCA) of the Texas Judicial System (TJS) in the form and manner prescribed by OCA. Requires the local administrative district judge in each county, or the person designated by the judge, except as provided by Subsection (b), to prepare and send to OCA a copy of all rules and forms adopted by the judges of the district courts trying felony cases in the county. Requires the local administrative statutory county court judge in each county, or the person designated by the judge, to prepare and send to OCA a copy of all rules and forms adopted by the judges of the county courts and statutory courts trying misdemeanor cases in the county.

(b) Requires the local administrative judge serving the courts having the jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, to prepare and send to OCA a copy of the rules and forms if the judges of two or more levels of courts adopt the same formal and informal rules and forms as described by Subsection (a).

(c) Requires the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, in each county, to prepare and send to OCA in the form and manner prescribed by the office and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, certain specific information.

(d) Requires each district and county clerk, as a duty of office, to cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to OCA under this section and under a reporting plan developed by the Task Force on Indigent Defense under Section 71.061(a).

(e) Requires OCA, on receipt of information required under this section, to forward the information to the Task Force on Indigent Defense.

SECTION 14. Amends Chapter 71, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. TASK FORCE ON INDIGENT DEFENSE.

Sec. 71.051. ESTABLISHMENT OF TASK FORCE; COMPOSITION. Provides that the Task Force on Indigent Defense (task force) is established as a standing committee on the Texas Judicial Council (council) and is composed of eight ex officio members and five appointive members.

Sec. 71.052. EX OFFICIO MEMBERS. Sets forth the composition of the ex officio members of the task force.

Sec. 71.053. APPOINTMENTS. (a) Requires the governor to appoint with the advice and consent of the senate five members of the task force. Sets forth the composition of the governor’s appointees to the task force.

(b) Provides that the members serve staggered terms of two years, with two members’ terms expiring February 1 of each odd-numbered year and two members’ terms expiring February 1 of each even-numbered year.

(c) Requires the governor, in making appointments to the task force, to attempt to reflect the geographic and demographic diversity of the state.

(d) Prohibits a person from being appointed to the task force if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the task force or the council.

Sec. 71.054. VACANCIES. Requires a vacancy on the task force to be filled for the unexpired term in the same manner as the original appointment. Requires an appointment to fill a vacancy to be made not later than the 90th day after the date the vacancy occurs.

Sec. 71.055. MEETINGS; QUORUM; VOTING. (a) Requires the task force to meet at least quarterly and at such times as it deems necessary or convenient to perform its duties.

(b) Provides that six members of the task force constitute a quorum for purposes of transacting task force business. Authorizes the task force to act only on the concurrence of five task force members or a majority of the task force members present, whichever number is greater. Authorizes the task force to develop policies and standards under Section 71.060 only on the concurrence of seven task force members.

(c) Provides that a task force member is entitled to vote on any matter before the task force, except as otherwise provided by rules adopted by the task force and ratified by the council.

Sec. 71.056. COMPENSATION. Prohibits a task force member from receiving compensation for services on the task force but is entitled to be reimbursed for actual and necessary expenses incurred in discharging the member's duties as a task force member. Provides that the expenses are paid from funds appropriated to the task force.

Sec. 71.057. BUDGET. (a) Requires the task force's budget to be a part of the budget for the council. Requires the task force, in preparing a budget and presenting the budget to the legislature, to consult with the executive director of the officer of court administration.

(b) Authorizes the task force's budget to include money for personnel who are employees of the council but who are assigned to assist the task force in performing its duties.

(c) Prohibits the executive director of the office of court administration from reducing or modifying the task force's budget or use funds appropriated to the task force without the approval of the task force.

Sec. 71.058. FAIR DEFENSE ACCOUNT. Provides that the fair defense account is an account in the general revenue fund. Authorizes the fair defense account to be appropriated only for the purposes of implementing this subchapter.

Sec. 71.059. ACCEPTANCE OF GIFTS, GRANTS, AND OTHER FUNDS; STATE GRANTS TEAM. (a) Authorizes the task force to accept gifts, grants, and other funds from any public or private source to pay expenses incurred in performing its duties under this subchapter.

(b) Authorizes the State Grant Team of the Governor's Office of Budget and Planning to assist the task force in identifying grants and other resources available for use by the task force in performing its duties under this subchapter.

Sec. 71.060. POLICIES AND STANDARDS. (a) Requires the task force to develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. Authorizes the policies and standards to include certain functions and considerations.

(b) Requires the task force to submit policies and standards developed under Subsection (a) to the council for ratification.

(c) Requires any qualification standards adopted by the task force under Subsection (a) that relates to the appointment of counsel in a death penalty case must be consistent with the standards specified under Article 26.052(d), Code of Criminal Procedure. Prohibits an attorney who is identified by the task force as not satisfying performance or qualification standards adopted by the task force under Subsection (a) from accepting an appointment in a capital case.

Sec. 71.061. COUNTY REPORTING PLAN; TASK FORCE REPORTS. (a) Requires the task force to develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information. Requires the plan to include certain provisions. Requires the task force to use the information reported by a county to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. Authorizes the task force to revise the plan as necessary to improve monitoring of indigent defense policies, standards, and procedures in this state.

(b) Requires the task force to annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and to publish in written and electronic form a report containing certain specific information regarding certain matters.

(c) Requires the task force to annually submit to the Legislative Budget Board and council and to publish in written and electronic form a detailed report of all expenditures made under this subchapter, including distributions under Section 71.062.

(d) Authorizes the task force to issue other reports relating to indigent defense as determined to be appropriate by the task force.

Sec. 71.062. TECHNICAL SUPPORT; GRANTS. (a) Requires the task force to:

- provide technical support to assist counties in improving their indigent defense system and promote compliance by counties with the requirements of state law relating to indigent defense;
- direct the comptroller to distribute funds, including grants, to counties to provide indigent defense services in the county; and
- monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to withdraw grant funds or require reimbursement of grant funds by the county.

(b) Requires the task force to direct the comptroller to distribute funds as required by Subsection (a)(2) based on a county's compliance with standards developed by the task force and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) Requires the task force to develop policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner..

(d) Prohibits a county from reducing the amount of funds provided for indigent defense services in the county because of funds provided by the task force under this section.

Sec. 71.063. IMMUNITY FROM LIABILITY. Provides that the task force or a member of the task force performing duties on behalf of the task force is not liable for damages arising from an act or omission within the scope of the duties of the task force.

SECTION 15. Repealers:

- Section 26.041 (Assistance for Court-Appointed Counsel in Harris County), Code of Criminal Procedure.
- Section 26.042 (Tarrant County Public Defender), Code of Criminal Procedure.
- Section 26.043 (Public Defender in Wichita County), Code of Criminal Procedure.
- Section 26.045 (Public Defender in 33rd Judicial District, Public Defender in Colorado County), Code of Criminal Procedure.
- Section 26.046 (Public Defender in Webb County), Code of Criminal Procedure.
- Section 26.047 (Public Defender in Colorado County), Code of Criminal Procedure.
- Section 26.048 (Public Defender in Cherokee County), Code of Criminal Procedure.
- Section 26.049 (Public Defender in Tom Green County), Code of Criminal Procedure.
- Section 26.050 (Public Defender in 293rd and 365th Judicial Districts), Code of Criminal Procedure.
- Section 26.053 (Public Defender in Randall County), Code of Criminal Procedure, as added by S.B. 1789, 77th Legislature, Regular Session, 2001.
- Section 26.054 (Public Defender in Potter County), Code of Criminal Procedure, as added by S.B. 1781, 77th Legislature, Regular Session, 2001.
- Section 26.058 (Public Defender in Aransas County), Code of Criminal Procedure.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Authorizes a county having established a public defender under a statute repealed or amended by this Act to continue the existence and operation of the public defender under the terms of the repealed or amended statute as that statute existed immediately before the effective date of this Act if the public defender is a governmental entity or nonprofit corporation described by Article 26.044(a), Code of Criminal Procedure, as amended by this Act. Makes application of the change in law made by this Act to Article 26.044, Code of Criminal Procedure, to the appointment of a public defender, prospective.

SECTION 18. Sets forth provisions regarding the application of Section 71.0351, Government Code, as added by this Act.

SECTION 19. Sets forth provisions regarding the appointments by the governor to the task force, including initial appointment and term.

SECTION 20. Sets forth provisions regarding the application of Article 26.052(d), Code of Criminal Procedure, as amended by this Act, including the appointment of an attorney to a death penalty case.

SECTION 21. Makes application of Article 102.075(h), Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 22. Effective date: January 1, 2002.